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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91217290
Party	Defendant Three Notch'd Brewing Company, LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CHRISTOPHER LOHRING,)	
Opposer,)	Onnosition No. 01217200
V.)	Opposition No. 91217290
v.)	Serial No. 85/920,112
THREE NOTCH'D BREWING COMPANY, LLC,)	,
)	
Applicant.)	
)	

APPLICANT'S MOTION TO COMPEL DISCOVERY RESPONSES AND BRIEF IN SUPPORT THEREOF

Applicant Three Notch'd Brewing Company, LLC ("Applicant"), by counsel, pursuant to Rule 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120), hereby moves for an order: (a) compelling Opposer to provide complete responses to Applicant's Interrogatory No. 9 and Applicant's Request for Production of Documents and Things (RPD) No. 10; and (b) awarding Applicant's attorneys' fees incurred in bringing this Motion. In support thereof, Applicant states as follows:

- 1. In this proceeding, Opposer has opposed registration of the mark shown in Applicant's Serial No. 85/920,112 ("Applicant's Mark"), alleging priority and a likelihood of confusion with Opposer's own mark, shown in U.S. Reg. No. 3,955,799 ("Opposer's Mark").
- 2. On August 13, 2014, Applicant filed its Answer to Opposer's Notice of Opposition, and Counterclaims, seeking to cancel U.S. Reg. No. 3,955,799 on grounds of non-use, lack of bona fide intent to use, fraud upon the United States Patent and Trademark Office (USPTO), and abandonment, all with respect to Opposer's Mark.
 - 3. On September 5, 2014, Opposer filed its Answer to Applicant's Counterclaims,

denying all allegations therein with respect to non-use, lack of bona fide intent to use, fraud upon the USPTO, and abandonment.

- 4. On October 9, 2014, Applicant propounded and served on Opposer its first sets of discovery requests, including its First Set of Interrogatories and First Set of Requests for Production of Documents and Things (collectively, "First Discovery Requests"). True copies of these discovery requests are attached hereto as Exhibits A and B.
- 5. Applicant's Interrogatory No. 9 and RPD No. 10 seek, *inter alia*, financial information and documents relating to the sales and advertisement of goods sold under Opposer's Mark.
- 6. Specifically, Applicant's Interrogatory No. 9 reads: "For the goods referred to in paragraph 3 of Opposer's Notice of Opposition, state the annual dollar volume of Opposer's sales and revenues in the United States of products bearing or sold under the Opposer's Mark, and the annual advertising and promotional expenditures for each year (or for each month for periods of less than a year) associated with the Opposer's Mark, from the first sale of each product of goods to the present."
- 7. Applicant's RPD No. 10 requests: "All documents evidencing Opposer's annual dollar volume of sales in the United States of goods and services on which or in connection with the Opposer's Mark or Variations of Opposer's Mark have been used for every year from the date of first use to the present. Include all documents which reflect, refer to, related to or evidence the information given in response to Applicant's Interrogatory No. 11."
- 8. On November 8, 2014, Opposer served its objections and responses to the First Discovery Requests ("Opposer's Initial Responses"). Copies of Opposer's Initial Responses are attached as Exhibits C and D.

- 9. Opposer's Initial Responses failed to respond adequately and completely to Applicant's Interrogatory No. 9 and RPD No. 10. In fact, rather than producing the requested financial information and documents, or even indicating that it would do so, Opposer merely objected to these requests on the meritless grounds that they are overly broad; that they are irrelevant to the claims, defenses, counterclaims, and allegations in the proceeding; that they are not reasonably calculated to lead to the discovery of admissible evidence; and that they seek discovery of matters beyond the scope of reasonable discovery.
- 10. The Trademark Trial and Appeal Board Manual of Procedure (TBMP) explicitly rejects Opposer's claims of overbreadth and irrelevance, providing that "[a]nnual sales and advertising figures, stated in round numbers, for a party's involved goods or services sold under its involved mark are proper matters for discovery." TBMP § 414(18). Further, the Board has held on numerous occasions that such information is relevant to issues of use and abandonment. See, e.g., Sunkist Growers, Inc. v. Benjamin Ansehl Company, 229 U.S.P.Q. 147 (TTAB Nov. 20, 1985) (noting that the Board "has held that annual sales and advertising figures . . . for specific goods bearing the involved mark(s) are proper matters for discovery since the information may well have a bearing upon the issues in an opposition or cancellation proceeding" and that "applicant's objection that the information is irrelevant is not well taken"); Varian Associates v. Fairfield-Noble Corporation, 188 U.S.P.Q. 581 (TTAB Sept. 22, 1975) ("The Board has held . . . that sales and advertising expenditures, in round numbers, for the goods bearing the mark involved in an opposition proceeding are proper matters for discovery since said information may well have bearing on the issue of registrability.").

- 11. On November 20, 2014, counsel for both Applicant and Opposer held a telephonic conference in which counsel for Applicant reiterated Applicant's requests for financial information and documents relating to the sales and advertisement of goods sold under Opposer's Mark, and referenced Applicant's Interrogatory No. 9 and RPD No. 10. Following the telephonic conference, counsel for Applicant sent an e-mail to Opposer's counsel, recapping the earlier discussion and reiterating its requests for responsive financial information and documents.
- 12. Having not heard or received anything from Opposer or its counsel during the ensuing two weeks, counsel for Applicant sent a follow-up e-mail to Opposer's counsel on December 3, 2014. Counsel for Opposer responded on the same day, stating that he had been collecting documents from Opposer during the previous two weeks and was expecting to supplement Opposer's discovery responses by the end of the week. However, no supplementation or production was made, and nine days later, on December 12, 2014, counsel for Applicant again contacted Opposer's counsel, inquiring as to the whereabouts of the requested financial information and documents.
- 13. On December 29, 2014, Opposer finally provided supplemental responses to Applicant's discovery requests. Copies of Opposer's supplemental responses ("Opposer's Supplemental Responses") are attached hereto as Exhibits E and F.
- 14. In Opposer's Supplemental Responses, Opposer supplemented its responses to Applicant's Interrogatory No. 9 and RPD No. 10 by providing labeled as "Exhibit 30." *See* Exhibit E, at 3; Exhibit F, at 4. However, "Exhibit 30"

. A copy of Exhibit 30 is attached hereto as Exhibit G.

- 15. On January 14, 2015, counsel for Applicant sent a letter to Opposer's counsel, noting the ongoing deficiency in Opposer's responses to Applicant's Interrogatory No. 9 and RPD No. 10, and requesting supplementation by no later than January 19, 2015. In the alternative, counsel for Applicant sought Opposer's counsel's availability to meet and confer by the same date.
- Opposer contacted Applicant's counsel and indicated that with respect to Applicant's Interrogatory No. 9 and RPD No. 10, he was working with his client to obtain further documentation. Opposer's counsel accordingly requested, and Applicant consented, to an extension of time to produce the requested information and documents, through February 6, 2015.
- 17. Having still received nothing from Opposer or its counsel for *another two weeks*, on February 20, 2015, counsel for Applicant contacted Opposer's counsel and advised that if the requested information and documents were not produced by February 25, 2015, Applicant would be forced to move the Board to compel such information and documents. Opposer again failed to respond or provide the requested information and documents. On February 26, 2015, counsel for Applicant again contacted Opposer's counsel, reiterating that Applicant would be forced to file this Motion, but providing Opposer one final opportunity to respond. Opposer again failed to respond, and Applicant is therefore left with no option but to file this Motion and seek the Board's assistance in compelling the discovery of clearly relevant information and documents

requested over four months ago.1

- 18. Opposer's responses to Applicant's First Discovery Requests are incomplete and, with respect to Applicant's Interrogatory No. 9 and RPD No. 10, rely on objections that are lacking in merit and serve no purpose other than to needlessly increase the difficulty and cost of this proceeding. Opposer has refused to address the deficiencies in Opposer's responses.
- 19. Rules 26(a) of the Federal Rules of Civil Procedure provide for discovery of non-privileged facts. Rule 37 prescribes remedies for failure to comply with discovery obligations under Rules 33 (interrogatories) and 34 (requests for production of documents). Under Rule 37(a), if a party fails to make a required disclosure, any other party may move to compel disclosure and for appropriate monetary sanctions, including attorneys' fees incurred by reason of the motion.²
- 20. The Board "looks with extreme disfavor on those who do not" cooperate in the discovery process, and advises that "[e]ach party and its attorney or other authorized representative has a duty . . . to make a good faith effort to satisfy the discovery needs of its adversary." TBMP § 408.01.
- 21. Applicant's counsel has made a good faith effort pursuant to 37 CFR § 2.120(e)(1), through repeated correspondence and telephonic conferences, to resolve with Opposer's counsel the issues involved in this Motion. Opposer's refusal to adequately and completely respond to the First Discovery Requests demonstrates Opposer's obstructionist intentions and contempt of Applicant's rights and the Board's jurisdiction.

¹ Applicant appreciates that Opposer and Opposer's counsel are located in New England, which has experienced winter storms during the course of this proceeding. Notwithstanding, Opposer has had over four months to produce the requested information and documents, and has continually failed to do so, despite its many promises to Applicant.

² An affidavit setting forth the fees incurred and requested in connection with this Motion will be provided to the Board upon completion of briefing and any other work related to the Motion.

22. The First Discovery Requests seek information which, upon information and belief, is exclusively in the Opposer's possession. Because of Opposer's refusal to adequately and completely respond to the First Discovery Requests, Applicant is severely prejudiced.

WHEREFORE, Applicant respectfully requests that the Board order that Opposer provide complete responses to Applicant's Interrogatory No. 9 and RPD No. 10; that produce any documents responsive to such requests; and that Opposer pay Applicant's reasonable attorneys' fees and expenses related to this Motion.

Respectfully submitted,

Date: February 27, 2015 By: /s/Robert C. Van Arnam

Williams Mullen

Robert C. Van Arnam 301 Fayetteville Street, Suite 1700 Raleigh, NC 27601 919-981-4000

Fax: 919-981-4300

Email: rvanarnam@williamsmullen.com

Thomas F. Bergert, Esquire 321 East Main St., Suite 400 Charlottesville, Virginia 22902-3200

Telephone: (434) 951-5700 Facsimile: (434) 817-0977

Email: tbergert@williamsmullen.com

Martin W. Hayes, Esquire 8300 Greensboro Drive, Suite 1100 Tysons Corner, VA 22102 Telephone: (703) 760-5245

Facsimile: (703) 748-0244

Email: mhayes@williamsmullen.com

Counsel for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February, 2015, the foregoing APPLICANT'S MOTION TO COMPEL DISCOVERY RESPONSES AND BRIEF IN SUPPORT THEREOF has been served on Opposer, Christopher Lohring, by mailing a true and correct copy of the same by first class mail, postage prepaid, to:

Daniel N. Smith, Esq.
New England Patent & Trademark
One Salem Green, Suite 405
Salem, Massachusetts 01970

/s/ Robert C. Van Arnam

Robert C. Van Arnam Williams Mullen P.C. 301 Fayetteville Street, Suite 1700 Raleigh, NC 27601 919-981-4000

Fax: 919-981-4300

Email: rvanarnam@williamsmullen.com

Counsel for Applicant



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Christopher Lohring,)	
Opposer,)	Opposition No. 91217290
v.)	opposition and the second
Three Notch'd Brewing Company, LLC,	į	
Applicant.)	
)	

In the Matter of Application No. 85920112

APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120), Applicant, Three Notch'd Brewing Company, LLC ("Applicant"), by counsel, hereby submits the following First Set of Interrogatories to Opposer ("Interrogatories"), Christopher Lohring ("Lohring" or "Opposer"), Applicant requests that Opposer answer the Interrogatories as instructed within thirty (30) days following service. For the convenience of the Board and parties, Applicant requests that each interrogatory be quoted in full immediately preceding the response.

DEFINITIONS

A. The terms "Christopher Lohring", "Lohring", "Opposer", "you" or "your" refers to Christopher Lohring and all companies owned in whole or in part by Christopher Lohring, parent and subsidiary corporations, officers, directors, employees, units, offices, divisions, predecessors, predecessors in right and/or title, successors in interest, principles, agents,

representatives, attorneys, assigns, affiliates, consultants, independent contractors, and the like acting for Christopher Lohring or on his behalf.

- B. The terms "Three Notch'd Brewing Company, LLC", "Respondent" or "Applicant," refers to Three Notch'd Brewing Company, LLC, and all representatives, assigns, and the like acting for him or on his behalf.
- C. The term "Mark" means any word, name, symbol, or device, or any combination thereof used by a person to identify and distinguish his or her goods or services, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown. See 15 U.S.C. § 1127. The term "Mark" includes any trademark, service mark, collective mark, or certification mark as those terms are defined under 15 U.S.C. § 1127.
- D. The term "Applicant's Mark" refers to Applicant's trademark, the subject of U.S. Application Serial No. 85/920,112.
- E. The term "Opposer's Mark" shall include, but not be limited to, the trade name or Mark "NOTCH" for which use has been alleged in Opposer's Notice of Opposition. The term "Variations of Opposer's Mark" shall include, but not be limited to, other trade names or Marks used by Opposer which include the term "NOTCH" in combination with any other words, designs, symbols, letters, numbers or phrases regardless of spacing, punctuation or capitalization.
- F. The term "Notice of Opposition" refers to Opposer's Notice of Opposition filed in the United States Patent and Trademark Office, Opposition No. 91217290, on July 9, 2014.
- G. The term "person" means any natural person, corporation, partnership, limited partnership, limited liability company, association, governmental agency or department or other entity of that kind, or any representative of the foregoing.

- The term "document" means any written, recorded or graphic matter, however H. produced or reproduced, whether or not in your possession, custody or control, and whether or not claimed to be privileged against discovery on any grounds, including, but not limited to, reports, lists, memoranda, call reports, work logs, time sheets, drawings, designs, sketches, worksheets, correspondence, schedules, sound recordings, photographs, videotapes, film, ledgers, books of account, catalogs, brochures and written statements of witnesses or other persons having knowledge of the pertinent facts. The term "document" also includes any and all copies of any document that contain any notation or otherwise differ from the original and other copies, and specifically includes any and all drafts of the above and any and all handwritten notes or notations in whatever form together with any attachments to any such documents. The term document expressly includes all computer records, and when such computer records are incorporated within the scope of these discovery requests, all documents shall be produced in both hard copy format and in a computer readable format, together with the computer file name and the identity of the file type in which it is stored. The definition also includes items incorporated in an electronic database of any kind, including hard drives, compact disks, floppy disks, magnetic tapes of any other media.
- I. The term "identify" or "the identity of" (a) when used in reference to persons or entities means to name each person or entity along with an address or phone number where such person or entity may be contacted and if the person or entity is other than a natural person, set forth its name and principal business address and the name and position of the individual purporting to act or speak for it or on its behalf; and (b) when used in reference to a document means to state the following for each document:
 - i. the nature and contents thereof;

- ii. the date thereof;
- iii. the date the document was executed if different from the date it bears;
- iv. the name, address and position of the author or signor thereof;
- v. the name, address and position of the addressee, if any;
- vi. the present location thereof and the present address and position of the person or persons having present custody thereof; and
- vii. whether the document has been destroyed and, if so, with regard to such destruction, the date thereof, the reason therefore, and the identity of the person or persons who destroyed the document.
- J. The term "referring or relating to" means discussing, reflecting, containing, dealing with, analyzing, evaluating, estimating, constituting, describing, evidencing or pertaining to in any way, either directly or indirectly, and either in whole or in part.
- K. The term "communication" means any form of communication, to include oral, written and electronic.
- L. The term "describe" or "a description of," when referring to communications or acts, means to state:
- i. the date of each communication or act; the identity of the communicator and/or recipient(s) of each communication or the person who performed each act identified;
 - ii. the substance of each communication or the nature of each act; and
- iii. the identity of all documents referring or relating to such communications and/or acts.
- M. The term "in connection with" means relating or pertaining to in any way, in whole or in part.

INSTRUCTIONS

- A. These discovery requests are deemed to be continuing so as to require the filing of supplemental responses in the event Christopher Lohring or his representatives (including counsel) learn of additional facts or documents not set forth or produced in the responses, or discover that information given in the responses is erroneous. Such supplemental responses may be filed from time to time but not later than thirty (30) days after such further information is received or discovered.
- B. Each Interrogatory is to be answered separately and as completely as possible. The fact that investigation is continuing or that discovery is not complete shall not be used as an excuse for failure to respond as fully as possible. The omission of any name, fact, document or other item of information from the responses shall be deemed a representation that such name, fact, document or item is not known to Christopher Lohring, his counsel or other representatives at the time of service of the responses.
- C. If you cannot supply precise information, state your best estimate or approximation (including your best approximation of dates by reference to other events, when necessary, designated as such).
- D. For each person identified, summarize what you believe to be the substance and basis of his or her knowledge or information and describe the means or manner through which he or she gained such knowledge or information.
- E. Where descriptions or identification of documents is requested, you may produce copies of documents, identifying the interrogatory to which the document relates, in lieu of a written response to the interrogatory, to the extent production of the documents constitutes a complete response to the interrogatory.

- F. If you object to any portion or aspect of a discovery request, answer the remainder.
- G. If you consider any information or document called for to be privileged, then you must include it in a list of information and documents withheld from production, identifying each item of information and document by date, addressee(s), author(s), title and subject matter. In addition, identify those persons who have seen the information and documents or who were sent copies. Finally, state the grounds upon which each document is considered privileged.
- H. For purposes of these Interrogatories, including the definitions and instructions, the word "and" includes the disjunctive "or," and the word "or" includes the conjunctive "and."
- I. The singular and masculine form of a noun or pronoun shall embrace the plural, the feminine, or the neuter, as the particular context makes appropriate.
- J. All responses to these Interrogatories should be submitted under oath, the answers to the interrogatories should be signed by the party making them, and responses delivered to Counsel for Applicant, Thomas F. Bergert, Williams Mullen, PC, 321 E. Main Street, Suite 400, Charlottesville, Virginia, 22902.

INTERROGATORIES

Interrogatory No. 1:

Identify and provide full contact information of persons having knowledge of any facts evidencing or supporting the claims, defenses or allegations in the above-captioned opposition proceeding, and state the subject matter for which they have knowledge.

Answer:

Interrogatory No. 2:

Describe in detail how Opposer became aware of Applicant's Mark, including the identity of all persons with knowledge of Applicant's Mark, the date(s) when such persons first acquired knowledge of Applicant's Mark, and all documents evidencing or referring to such knowledge.

Answer:

Interrogatory No. 3:

Describe in detail all formal registration proceedings pursued by Opposer for the Opposer's Mark, including but not limited to, international, federal and state registration proceedings, applications for registration, or amendments thereto, and the respective dates of filing, submission, registration, expiration, cancellation, withdrawal and/or abandonment.

Answer:

Interrogatory No. 4:

Describe in detail any instance(s) where Opposer discontinued or ceased use of Opposer's Mark, including but not limited to use with beer, lager, ale, stout, porter or dealcoholised beer (Opposer's Products), and including a description of when, where and why such discontinuance or cessation occurred, and any decision to resume use of Opposer's Mark

Answer:

Interrogatory No. 5:

State whether Opposer has conducted, commissioned or is aware of any survey, research or other studies concerning the recognition level of consumers in the United States of the Opposer's Mark, or any variation thereof, as used by Opposer, or concerning the Applicant's Mark, or concerning any actual confusion as between the use of these marks.

Answer:

Interrogatory No. 6:

Identify and describe in detail all statements, inquiries, comments or other communications by or from Opposer's customers, competitors or other third parties, either written or oral, evidencing any confusion, suspicion, belief or doubt on the part of said customer, competitor or other third party as to the relationship, if any, between Opposer and Applicant or their respective products and/or services.

Answer:

Interrogatory No. 7:

Identify and describe in detail any instance(s) in which a person has been confused, mistaken or deceived as to the source of Opposer's products advertised, promoted, offered for sale or sold under Opposer's Mark, including but not limited to instances of confusion, mistake or deception vis a vis Applicant's Mark.

Answer:

Interrogatory No. 8:

Identify all agreements, licenses, or understandings between the Opposer and any thirdparty relating to the use or registration of the Opposer's Mark and identify the persons employed by Opposer with the most knowledge of any such agreement, license, or understanding.

Answer:

Interrogatory No. 9:

For the goods referred to in paragraph 3 of Opposer's Notice of Opposition, state the annual dollar volume of Opposer's sales and revenues in the United States of products bearing or

sold under the Opposer's Mark, and the annual advertising and promotional expenditures for each year (or for each month for periods of less than a year) associated with the Opposer's Mark, from the first sale of each product of goods to the present.

Answer:

Interrogatory No. 10:

For the goods referred to in paragraph 3 of Opposer's Notice of Opposition, identify the information and documents supporting Opposer's declaration in the Statement of Use filed on or around March 4, 2011 in Opposer's Application Serial No. 77/958,348 (the "'348 Application").

Answer:

Interrogatory No. 11:

State whether Opposer obtained any opinion or advice, formal or informal, regarding Applicant's Mark and, if so, for all such opinions or advice, identify the person who requested the opinion or advice, the person rendering the opinion or advice, the person receiving the opinion or advice, the date the opinion or advice was requested and the date the opinion or advice was received.

Answer:

Interrogatory No. 12:

State whether Opposer has ever been a party to any proceeding or action, other than the present action, involving Opposer's Mark and, if so, for all such proceedings or actions, identify the parties to the proceeding or action, Opposer's status in the action, the mark or marks

involved, the kind of proceeding or action, the name of the court or tribunal where the action was filed, the date and docket number of the proceeding or action, whether there was a trial or hearing and the ultimate disposition of the proceeding action.

Answer:

Interrogatory No. 14:

Identify all trademark uses by Opposer of any of the terms "THREE", "NOTCH'D" and "Charlottesville, VA" including the date when any such term was first used as such and the products or services in connection therewith.

Answer:

Interrogatory No. 15:

State in detail all facts which support the allegation in each of paragraphs 18 through 22 of the Notice of Opposition that Applicant's Mark so resembles Opposer's Mark as to be likely to cause confusion, or to cause mistake or to deceive, and identify all persons with knowledge of such facts and describe their knowledge.

Answer:

Interrogatory No. 16:

State all facts which support the allegation in paragraph 23 of the Notice of Opposition that Opposer's Mark is a famous mark and that Applicant's Mark has diluted Opposer's Mark, and identify all persons with knowledge of such facts and describe their knowledge.

Answer:

Interrogatory No. 17:

Identify all persons who were consulted in formulating the responses to the above Interrogatories.

Answer:

Respectfully Submitted,

THREE NOTCH'D BREWING COMPANY, LLC,

Applicant

Thomas F. Bergert, Esq.

WILLIAMS MULLEN, P.C.

321 E. Main Street, Suite 400

Charlottesville, Virginia 22902

(434) 951-5700

(434) 817-0977 (facsimile)

Counsel for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October 2014, the foregoing Applicant's First Set of Interrogatories to Opposer have been served on Opposer, Christopher Lohring, by mailing a true and correct copy of the same by first class mail, postage prepaid, to:

Daniel N. Smith, Esq.
New England Patent & Trademark
One Salem Green, Suite 405
Salem, Massachusetts 01970

Thomas F. Bergert, Esq.

WILLIAMS MULLEN, P.C.

321 E. Main Street, Suite 400

Charlottesville, Virginia 22902

(434) 951-5700

(434) 817-0977 (facsimile)

Counsel for Applicant



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Christopher Lohring,		
Opposer, v.))	Opposition No. 91217290
Three Notch'd Brewing Company, LLC,)	
Applicant.)	

In the Matter of Application No. 85920112

APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120), Applicant, Three Notch'd Brewing Company, LLC ("Applicant"), by counsel, hereby submits the following First Set of Requests for Production of Documents and Things ("First Requests") to Opposer, Christopher Lohring ("Lohring" or "Opposer"). Applicant requests that Opposer produce for inspection and copying each of the following documents at the offices of Counsel for Applicant, Williams Mullen, PC, 321 E. Main Street, Suite 400, Charlottesville, Virginia 22902, within thirty (30) days following the service of these requests, or at such other time and place as the parties may mutually agree upon.

INSTRUCTIONS

1. Each request for production shall be answered in accordance with the Federal Rules of Civil Procedure and shall be continuing to the extent permitted under Rule 26(e).

- 2. If Opposer contends that any information sought in these requests for production is exempt from discovery because it is exempted by any privilege or protection, Opposer is to provide the following information, in lieu of producing such documents:
 - a. the privilege or protection that Opposer contends applies and facts sufficient to support the privilege or protection; and
 - b. if the information is contained in a document, the author, addressee(s), all recipients, subject matter, and date of the document; if the information is not contained in a document, the persons involved in and the date of the communication giving rise to the privilege or protection that Opposer claims.
- 3. If any requested document or thing is no longer in existence: identify and describe each requested document by date, author(s), and recipient(s) and summarize its contents; identify each requested thing by function, brand, model and year; identify the person(s) responsible for destruction of any requested document or thing; and state the reason(s) for the destruction of any requested document or thing.
- 4. Unless otherwise specified in the document request, the relevant time frame for these requests is from the initial development and adoption of the NOTCH mark.
- 5. Pursuant to Rule 34(b), documents and things are to be produced either (1) as they are kept in the usual course of business, or (2) organized and labeled to correspond to the individual requests. Pursuant to Fed. R. Civ. P. 34(b)(1)(C), Applicant requests that electronically stored information ("ESI") initially be produced as Static Images¹ (each document/file produced as a separate multi-page Tagged Image File Format ("TIFF") image) unless a specific request refers to production of Native Files. If Load Files were created in the

process of converting Native Files to Static Images, or if Load Files may be created without undue burden or cost, Load Files should be produced together with the Static Images to allow plaintiff to load the images into its litigation support database application and review tool, Summation. In all cases where Opposer produces ESI as Static Image(s), the Native File(s) should be preserved.

- 6. For the convenience of the Board and parties, Applicant requests that each request for production be quoted in full immediately preceding the response.
- 7. For purposes of Applicant's First Requests, Applicant adopts and incorporates by reference the Definitions and Instructions set forth in Applicant's First Set Of Interrogatories To Opposer.

REQUESTS FOR DOCUMENTS AND THINGS

Request No. 1:

Other than communication with counsel for Opposer, all communications with third parties regarding this proceeding or the subject matter hereof.

Request No. 2:

All documents Opposer has obtained from any third party concerning any matter relating to this action.

Request No. 3:

All documents which evidence or reflect information given in response to Applicant's Interrogatory No. 18.

Request No. 4:

All documents which evidence, reflect, or refer to any survey, research or other studies done or commissioned by or on behalf of Opposer concerning the recognition level of consumers in the United States of the Opposer's Mark, or any Variation of Opposer's Mark, as used by Opposer, or concerning the Applicant's Mark, or concerning any actual confusion as between the use of these marks.

Request No. 5:

All documents evidencing, relating or referring to any instance in which a person has been confused, mistaken or deceived as to the source of Opposer's products advertised, promoted, offered for sale or sold under Opposer's Mark, including but not limited to instances of confusion, mistake or deception vis a vis Applicant's Mark.

Request No. 6:

All documents which evidence or reference statements, inquiries, comments or other communications by or from Opposer's customers, competitors or other third parties, either written or oral, evidencing any confusion, suspicion, belief or doubt on the part of said customer, competitor or other third party as to the relationship, if any, between Opposer and Applicant or their respective products and/or services.

Request No. 7:

All documents which evidence, reflect, or refer to any third party uses known to Opposer of the mark NOTCH, or any other trademark or design which includes the term "NOTCH", alone or in combination with any other words, designs, symbols, letters, numbers or phrases.

Request No. 8:

All documents which evidence, reflect, or refer to any license, assignment, consent, authorization, settlement agreement, loan, security agreement or permission between Opposer and any individual or entity ever received or given by Opposer or contemplated by Opposer relating to the Opposer's Mark.

Request No. 9:

All documents which evidence, reflect, or refer to any discontinued or interrupted use of the Opposer's Mark, and any decision to resume use of the Opposer's Mark.

Request No. 10:

All documents evidencing Opposer's annual dollar volume of sales in the United States of goods and services on which or in connection with the Opposer's Mark or Variations of Opposer's Mark have been used for every year from the date of first use to the present. Include all documents which reflect, refer to, relate to or evidence the information given in response to Applicant's Interrogatory No. 11.

Request No. 11:

Representative samples of all labels, packaging materials, advertisements, catalogs, products, brochures, business materials, and other promotional materials bearing the Opposer's Mark as currently used by Opposer in the United States.

Request No. 12:

Representative samples of all labels, packaging materials, advertisements, catalogs, products, brochures, business materials, and other promotional materials bearing the Opposer's Mark as used by Opposer in the United States which demonstrate use at the time or times stated in Opposer's response to Interrogatory No. 12.

Request No. 13:

All documents evidencing, reflecting or referencing the geographic scope of Opposer's manufacturing, sales and promotion using Opposer's Mark.

Request No. 14:

All documents used to formulate the responses to Applicant's First Set of Interrogatories to Opposer and Applicant's First Set of Requests for Admission to Opposer.

Respectfully Submitted,

THREE NOTCH'D BREWING COMPANY, LLC, Applicant

Thomas F. Bergert, Esq.

WILLIAMS MULLEN, P.C.

321 E. Main Street, Suite 400

Charlottesville, Virginia 22902 (434) 951-5700 (434) 817-0977 (facsimile) Counsel for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on this 9^{th} day of October 2014, the foregoing Applicant's First Set of Requests for Production of Documents and Things to Opposer have been served on Opposer, Christopher Lohring, by mailing a true and correct copy of the same by first class mail, postage prepaid, to:

Daniel N. Smith, Esq. New England Patent & Trademark One Salem Green, Suite 405 Salem, Massachusetts 01970

Thomas F. Bergert, Esq.

WILLIAMS MULLEN, P.C.

321 E. Main Street, Suite 400

Charlottesville, Virginia 22902

(434) 951-5700

(434) 817-0977 (facsimile)

Counsel for Applicant



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Christopher Lohring))
Opposer/Applicant v. THREE NOTCH'D BREWING COMPANY, LLC Applicant/Opposer	NOTICE OF OPPOSITION In Re Serial. No. 85/920,112 Mark: Three Notch'd BREWING COMPANY Pharlottewille, Va International Class: 032 Filed: May 1, 2013 Opposition No.: 91217290

OPPOSER'S ANSWERS TO APPLICANT'S FIRST SET OF INTERROGATORIES

Opposer submits the following answers to Applicant's First Set of Interrogatories.

Preliminary Statement and General Objections

- 1. Opposer provides the answers herein without admitting the relevancy, materiality, or admissibility of the information, and specifically reserves the right to object at trial to the relevancy, materiality, or admissibility of any information provided herein.
- 2. Opposer reserves the right to supplement these answers as may become necessary prior to the trial of this action.
- 3. Opposer objects to Applicant's interrogatories to the extent they call for information protected from discovery under the attorney-client privilege and/or work product immunity, or is otherwise not subject to discovery.
- 4. Opposer objects to Applicant's interrogatories as seeking confidential information absent the execution of a mutually agreeable protective order. To the extent that these responses indicate that documents will be produced, such documents will be produced on an "Attorney's

Eyes Only" basis.

- 5. Opposer objects to Applicant's interrogatories and definitions to the extent that they require Opposer to undertake burdens beyond the requirements imposed by the Federal Rules of Civil Procedure.
- 6. Opposer further objects to these interrogatories to the extent that they seek information irrelevant to the subject matter of this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.
- 7. Opposer objects to these interrogatories to the extent that they are duplicative and redundant.

These general objections apply to all of Opposer's answers set forth herein. To the extent that specific objections are made in a specific answer, they are provided because they are believed to be particularly applicable to the specific interrogatory and should not be construed as a waiver of any general objection.

Answers

In view of, and in no way contrary to, the above objections, Opposer responds to Opposer's Interrogatories as follows:

Interrogatory No.1:

Identify and provide full contact information of persons having knowledge of any facts evidencing or supporting the claims, defenses or allegations in the above-captioned opposition proceeding, and state the subject matter for which they have knowledge.

<u>Answer:</u> The following persons, already identified in Opposer's Initial Disclosures to Applicant, have knowledge of facts evidencing or supporting the claims, defenses, or allegations:

REDACTED

REDACTED

Interrogatory No.2:

Describe in detail how Opposer became aware of Applicant's Mark, including the identity of all persons with knowledge of Applicant's Mark, the date(s) when such persons first acquired knowledge of Applicant's Mark, and all documents evidencing or referring to such knowledge.

Answer: Objection. Opposer objects to the documents evidencing or referring to such knowledge on the grounds that it seeks calls for communications between Opposer and Opposer's counsel protected from discovery under attorney-client privilege and/or work product immunity.

REDACTED

Interrogatory No.3:

Describe in detail all formal registration proceedings pursued by Opposer for the Opposer's Mark, including but not limited to, international, federal and state registration proceedings, applications for registration, or amendments thereto, and the respective dates of filing, submission, registration, expiration, cancellation, withdrawal and/or abandonment.

REDACTED

Interrogatory No.4:

Describe in detail any instance(s) where Opposer discontinued or ceased use of Opposer's Mark, including but not limited to use with beer, lager, ale, stout, porter or dealcoholised beer (Opposer's Products), and including a description of when, where and why such discontinuance or cessation occurred, and any decision to resume use of Opposer's Mark.

Interrogatory No. 5:

State whether Opposer has conducted, commissioned or is aware of any survey, research or other studies concerning the recognition level of consumers in the United States of the Opposer's Mark, or any variation thereof, as used by Opposer, or concerning the Applicant's Mark, or concerning any actual confusion as between the use of these marks.

REDACTED

Interrogatory No. 6:

Identify and describe in detail all statements, inquiries, comments or other communications by or from Opposer's customers, competitors or other third parties, either written or oral, evidencing any confusion, suspicion, belief or doubt on the part of said customer, competitor or other third party as to the relationship, if any, between Opposer and Applicant or their respective products and/or services.

Interrogatory No.7:

Identify and describe in detail any instance(s) in which a person has been confused, mistaken or deceived as to the source of Opposer's products advertised, promoted, offered for

sale or sold under Opposer's Mark, including but not limited to instances of confusion, mistake or deception vis a vis Applicant's Mark.

Answer: Objection. Opposer objects to this interrogatory on the grounds that it is vague, overly broad; and duplicative and redundant with Applicant's Interrogatory No. 6. Opposer reserves the right to supplement this answer as may become necessary prior to the trial of this action.

REDACTED

Interrogatory No. 8:

Identify all agreements, licenses, or understandings between the Opposer and any third party relating to the use or registration of the Opposer's Mark and identify the persons employed by Opposer with the most knowledge of any such agreement, license, or understanding.

Answer: Objection. Opposer objects to this interrogatory on the grounds that it is irrelevant to any of the claims, defenses, counterclaims, or allegations in the above-captioned opposition proceeding; not reasonably calculated to lead to the discovery of admissible evidence, seeks discovery of matters beyond the scope of reasonable discovery, and seeks confidential information absent the execution of a mutually agreeable protective order. Opposer reserves the right to supplement this answer as may become necessary prior to the trial of this action.

Interrogatory No.9:

For the goods referred to in paragraph 3 of Opposer's Notice of Opposition, state the annual dollar volume of Opposer's sales and revenues in the United States of products bearing or sold under the Opposer's Mark, and the annual advertising and promotional expenditures for each year (or for each month for periods of less than a year) associated with the Opposer's Mark, from the first sale of each product of goods to the present.

Answer: Objection. Opposer objects to this interrogatory on the grounds that it is irrelevant to any of the claims, defenses, counterclaims, or allegations in the above-captioned opposition proceeding; not reasonably calculated to lead to the discovery of admissible evidence, and seeks discovery of matters beyond the scope of reasonable discovery. Opposer reserves the right to supplement this answer as may become necessary prior to the trial of this action.

Interrogatory No. 10:

For the goods referred to in paragraph 3 of Opposer's Notice of Opposition, identify the information and documents supporting Opposer's declaration in the Statement of Use filed on or around March 4, 2011 in Opposer's Application Serial No. 77/958,348 (the "'348 Application").

REDACTED

Interrogatory No. 11:

State whether Opposer obtained any opinion or advice, formal or informal, regarding Applicant's Mark and, if so, for all such opinions or advice, identify the person who requested

the opinion or advice, the person rendering the opinion or advice, the person receiving the opinion or advice, the date the opinion or advice was requested and the date the opinion or advice was received.

<u>Answer:</u> Objection. Opposer objects to this interrogatory on the grounds that calls for information protected from discovery under attorney-client privilege and/or work product immunity between Opposer and Opposer's counsel. Opposer reserves the right to supplement this answer as may become necessary prior to the trial of this action.

REDACTED

Interrogatory No. 12:

State whether Opposer has ever been a party to any proceeding or action, other than the present action, involving Opposer's Mark and, if so, for all such proceedings or actions, identify the parties to the proceeding or action, Opposer's status in the action, the mark or marks involved, the kind of proceeding or action, the name of the court or tribunal where the action was filed, the date and docket number of the proceeding or action, whether there was a trial or hearing and the ultimate disposition of the proceeding action.

Interrogatory No. 14:

Identify all trademark uses by Opposer of any of the terms "THREE", "NOTCH'D" and "Charlottesville, VA" including the date when any such term was first used as such and the products or services in connection therewith.

Answer: Objection. Opposer objects to this interrogatory on the grounds that it is argumentative with regard to use of the term "NOTCH'D".

Interrogatory No. 15:

State in detail all facts which support the allegation in each of paragraphs 18 through 22 of the Notice of Opposition that Applicant's Mark so resembles Opposer's Mark as to be likely to cause confusion, or to cause mistake or to deceive, and identify all persons with knowledge of such facts and describe their knowledge.

Answer: Objection. Opposer objects to this interrogatory on the grounds that it is argumentative, overly broad; and duplicative and redundant with Applicant's Interrogatory No. 6. Opposer reserves the right to supplement this answer as may become necessary prior to the trial of this action.

Interrogatory No. 16:

State all facts which support the allegation in paragraph 23 of the Notice of Opposition that Opposer's Mark is a famous mark and that Applicant's Mark has diluted Opposer's Mark, and identify all persons with knowledge of such facts and describe their knowledge.

Interrogatory No. 17:

Identify all persons who were consulted in formulating the responses to the above Interrogatories.

REDACTED

DATED this 8th day of November, 2014.

Respectfully submitted,

/s/Christopher Lohring

Christopher Lohring President, Notch Brewing

As to Objections Respectfully Submitted by

Daniel N. Smith, Esq. Counsel for Opposer

One Salem Green, Suite 405

Salem, MA 01970

Telephone: 978-882-0160 Facsimile: 978-882-0161

CERTIFICATE OF SERVICE

Under 37 C.F.R. § 2.119, the undersigned hereby certifies that a true and correct copy of the foregoing **OPPOSER'S ANSWERS TO APPLICANT'S FIRST SET OF INTERROGATORIES** was served on Applicant's attorney of record at the correspondence address of record in the United States Patent and Trademark Office by sending a true copy thereof, via e-mail and First Class Mail; postage prepaid this 8th day of November, 2014, in an envelope addressed as follows:

Thomas F. Bergert
Williams Mullen
321 E. Main Street, Suite 400
Charlottesville, VA 22902-3200
tbergert@williamsmullen.com
ip@williamsmullen.com

Date: November 8, 2014

Daniel N. Smith Counsel for Opposer

1 Salem Green, Suite 405

Salem, MA 01970

Telephone: 978-882-0160 Facsimile: 978-882-0161



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Christopher Lohring	
Opposer/Applicant v. THREE NOTCH'D BREWING COMPANY, LLC Applicant/Opposer	NOTICE OF OPPOSITION In Re Serial. No. 85/920,112 Mark: Three Notch'd BREWING COMPANY Charlottesville, Va International Class: 032 Filed: May 1, 2013 Opposition No.: 91217290

OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF DOCUMENT REQUESTS

Opposer submits the following responses to Applicant's First Set of Requests for Production of Documents.

Preliminary Statement and General Objections

- 1. Opposer provides the responses herein without admitting the relevancy, materiality, or admissibility of the information, and specifically reserves the right to object at trial to the relevancy, materiality, or admissibility of any information provided herein.
- 2. Opposer reserves the right to supplement these responses as may become necessary prior to the trial of this action.
- 3. Opposer objects to Applicant's document requests to the extent they call for information protected from discovery under the attorney-client privilege and/or work product immunity, or is otherwise not subject to discovery.
 - 4. Opposer objects to Applicant's document requests as seeking confidential

information absent the execution of a mutually agreeable protective order. To the extent that these responses indicate that documents will be produced, such documents will be produced on an "Attorney's Eyes Only" basis.

- 5. Opposer objects to Applicant's document requests and definitions to the extent that they require Opposer to undertake burdens beyond the requirements imposed by the Federal Rules of Civil Procedure and Rule 2.120 of the trademark Rules of Practice of the United States Patent and Trademark Office.
- 6. Opposer further objects to these document requests to the extent that they seek information irrelevant to the subject matter of this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.
- 7. Opposer objects to these document requests to the extent that they are duplicative and redundant.
- 8. Opposer objects to these document requests to the extent that they seek documents not within the Opposer's possession, custody, or control.
- 9. In Opposer's responses herein, Opposer has indicated that relevant documents within their files will be produced. That statement is not to be construed as a representation that such documents exist but merely that they will be searched for and produced if found to exist.
- 10. Where Opposer has agreed to produce documents for inspection, it is understood that they will be produced at the offices of Opposer's counsel as kept in the usual course of business. However, where document requests are redundant or where a document falls into more than one document request, Opposer reserves the right to produce the document only once, pursuant to any one of the requests under which its production is sought.

These general objections apply to all of Opposer's responses set forth herein. To the extent that specific objections are made in a specific response, they are provided because they are believed to be particularly applicable to the specific interrogatory and should not be construed as a waiver of any general objection.

Request No.1:

Other than communication with counsel for Opposer, all communications with third parties regarding this proceeding or the subject matter hereof.

REDACTED

Request No. 2:

All documents Opposer has obtained from any third party concerning any matter relating to this action.

REDACTED

Request No. 3:

All documents which evidence or reflect information given in response to Applicant's Interrogatory No. 18.

Request No. 4:

All documents which evidence, reflect, or refer to any survey, research or other studies done or commissioned by or on behalf of Opposer concerning the recognition level of consumers in the United States of the Opposer's Mark, or any Variation of Opposer's Mark, as used by Opposer, or concerning the Applicant's Mark, or concerning any actual confusion as between the use of these marks.

REDACTED

Request No. 5:

All documents evidencing, relating or referring to any instance in which a person has been confused, mistaken or deceived as to the source of Opposer's products advertised, promoted, offered for sale or sold under Opposer's Mark, including but not limited to instances of confusion, mistake or deception vis a vis Applicant's Mark.

REDACTED

Request No. 6:

All documents which evidence or reference statements, inquiries, comments or other communications by or from Opposer's customers, competitors or other third parties, either written or oral, evidencing any confusion, suspicion, belief or doubt on the part of said customer, competitor or other third party as to the relationship, if any, between Opposer and Applicant or their respective products and/or services.

Request No. 7:

All documents which evidence, reflect, or refer to any third party uses known to Opposer of the mark NOTCH, or any other trademark or design which includes the term "NOTCH", alone or in combination with any other words, designs, symbols, letters, numbers or phrases.

Response: Objection. Opposer objects to this request on the grounds that it is irrelevant to any of the claims, defenses, counterclaims, or allegations in the above-captioned opposition proceeding; vague, overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks discovery of matters beyond the scope of reasonable discovery.

Request No. 8:

All documents which evidence, reflect, or refer to any license, assignment, consent, authorization, settlement agreement, loan, security agreement or permission between Opposer and any individual or entity ever received or given by Opposer or contemplated by Opposer relating to the Opposer's Mark.

Response: Objection. Opposer objects to this request on the grounds that it is irrelevant to any of the claims, defenses, counterclaims, or allegations in the above-captioned opposition proceeding; overly broad, not reasonably calculated to lead to the discovery of admissible evidence, seeks discovery of matters beyond the scope of reasonable discovery, and seeks confidential information absent the execution of a mutually agreeable protective order.

Request No. 9:

All documents which evidence, reflect, or refer to any discontinued or interrupted use of the Opposer's Mark, and any decision to resume use of the Opposer's Mark.

Request No. 10:

All documents evidencing Opposer's annual dollar volume of sales in the United States of goods and services on which or in connection with the Opposer's Mark or Variations of Opposer's Mark have been used for every year from the date of first use to the present. Include all documents which reflect, refer to, relate to or evidence the information given in response to Applicant's Interrogatory No. 11.

Response: Objection. Opposer objects to this request on the grounds that it is overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks discovery of matters beyond the scope of reasonable discovery.

Request No. 11:

Representative samples of all labels, packaging materials, advertisements, catalogs, products, brochures, business materials, and other promotional materials bearing the Opposer's Mark as currently used by Opposer in the United States.

REDACTED

Request No. 12:

Representative samples of all labels, packaging materials, advertisements, catalogs, products, brochures, business materials, and other promotional materials bearing the Opposer's

Mark as used by Opposer in the United States which demonstrate use at the time or times stated in Opposer's response to Interrogatory No. 12.

REDACTED

Request No. 13:

All documents evidencing, reflecting or referencing the geographic scope of Opposer's manufacturing, sales and promotion using Opposer's Mark.

REDACTED

Request No. 14:

All documents used to formulate the responses to Applicant's First Set of Interrogatories to Opposer and Applicant's First Set of Requests for Admission to Opposer.

REDACTED

DATED this 8th day of November, 2014.

Respectfully submitted,

Daniel N. Smith, Esq. Counsel for Opposer

One Salem Green, Suite 405

Salem, MA 01970

Telephone: 978-882-0160 Facsimile: 978-882-0161

CERTIFICATE OF SERVICE

Under 37 C.F.R. § 2.119, the undersigned hereby certifies that a true and correct copy of the foregoing **OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS** was served on Applicant's attorney of record at the correspondence address of record in the United States Patent and Trademark Office by sending a true copy thereof, via e-mail and First Class Mail; postage prepaid this 8th day of November, 2014, in an envelope addressed as follows:

Thomas F. Bergert Williams Mullen 321 E. Main Street, Suite 400 Charlottesville, VA 22902-3200 tbergert@williamsmullen.com ip@williamsmullen.com

Date: November 8, 2014

Daniel N. Smith
Counsel for Opposer

1 Salem Green, Suite 405

Salem, MA 01970

Telephone: 978-882-0160 Facsimile: 978-882-0161



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Christopher Lohring))
Opposer/Applicant v. THREE NOTCH'D BREWING COMPANY, LLC Applicant/Opposer	NOTICE OF OPPOSITION In Re Serial. No. 85/920,112 Mark: Three Notch'd BREWING COMPANY Charlottesville, Va International Class: 032 Filed: May 1, 2013 Opposition No.: 91217290

OPPOSER'S SUPPLEMENTAL ANSWERS TO APPLICANT'S FIRST SET OF INTERROGATORIES

Opposer submits the following supplmental answers to Applicant's First Set of Interrogatories.

Preliminary Statement and General Objections

- 1. Opposer provides the answers herein without admitting the relevancy, materiality, or admissibility of the information, and specifically reserves the right to object at trial to the relevancy, materiality, or admissibility of any information provided herein.
- 2. Opposer reserves the right to supplement these answers as may become necessary prior to the trial of this action.
- 3. Opposer objects to Applicant's interrogatories to the extent they call for information protected from discovery under the attorney-client privilege and/or work product immunity, or is otherwise not subject to discovery.
 - 4. Opposer objects to Applicant's interrogatories as seeking confidential information

absent the execution of a mutually agreeable protective order. To the extent that these responses indicate that documents will be produced, such documents will be produced on an "Attorney's Eyes Only" basis.

- 5. Opposer objects to Applicant's interrogatories and definitions to the extent that they require Opposer to undertake burdens beyond the requirements imposed by the Federal Rules of Civil Procedure.
- 6. Opposer further objects to these interrogatories to the extent that they seek information irrelevant to the subject matter of this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.
- 7. Opposer objects to these interrogatories to the extent that they are duplicative and redundant.

These general objections apply to all of Opposer's answers set forth herein. To the extent that specific objections are made in a specific answer, they are provided because they are believed to be particularly applicable to the specific interrogatory and should not be construed as a waiver of any general objection.

Answers

In view of, and in no way contrary to, the above objections, Opposer responds to Opposer's Interrogatories as follows:

Interrogatory No. 6:

Identify and describe in detail all statements, inquiries, comments or other communications by or from Opposer's customers, competitors or other third parties, either written or oral, evidencing any confusion, suspicion, belief or doubt on the part of said customer,

competitor or other third party as to the relationship, if any, between Opposer and Applicant or their respective products and/or services.

REDACTED

Interrogatory No.9:

For the goods referred to in paragraph 3 of Opposer's Notice of Opposition, state the annual dollar volume of Opposer's sales and revenues in the United States of products bearing or sold under the Opposer's Mark, and the annual advertising and promotional expenditures for each year (or for each month for periods of less than a year) associated with the Opposer's Mark, from the first sale of each product of goods to the present.

Answer: Objection. Opposer objects to this interrogatory on the grounds that it is irrelevant to any of the claims, defenses, counterclaims, or allegations in the above-captioned opposition proceeding; not reasonably calculated to lead to the discovery of admissible evidence, and seeks discovery of matters beyond the scope of reasonable discovery. Opposer reserves the right to supplement this answer as may become necessary prior to the trial of this action.

Not withstanding the above objection, Opposer attaches

REDACTED

REDACTED

as Exhibit 30 attached to Opposer's Supplemental

Answer to Applicant's First Request for the Production of Documents.

Interrogatory No. 10:

For the goods referred to in paragraph 3 of Opposer's Notice of Opposition, identify the information and documents supporting Opposer's declaration in the Statement of Use filed on or around March 4, 2011 in Opposer's Application Serial No. 77/958,348 (the "'348 Application").

Interrogatory No. 16:

State all facts which support the allegation in paragraph 23 of the Notice of Opposition that Opposer's Mark is a famous mark and that Applicant's Mark has diluted Opposer's Mark, and identify all persons with knowledge of such facts and describe their knowledge.

DATED this 23rd day of December, 2014.

Respectfully submitted,

/s/Christopher Lohring

Christopher Lohring President, Notch Brewing

As to Objections Respectfully Submitted by

Daniel N. Smith, Esq. Counsel for Opposer One Salem Green, Suite 405

Salem, MA 01970

Telephone: 978-882-0160 Facsimile: 978-882-0161

CERTIFICATE OF SERVICE

Under 37 C.F.R. § 2.119, the undersigned hereby certifies that a true and correct copy of the foregoing **OPPOSER'S SUPPLEMENTAL ANSWERS TO APPLICANT'S FIRST SET OF INTERROGATORIES** was served on Applicant's attorney of record at the correspondence address of record in the United States Patent and Trademark Office by sending a true copy thereof, via e-mail and First Class Mail; postage prepaid this 23rd day of December, 2014, in an envelope addressed as follows:

Thomas F. Bergert
Williams Mullen
321 E. Main Street, Suite 400
Charlottesville, VA 22902-3200
tbergert@williamsmullen.com
ip@williamsmullen.com

Date: December 23, 2014

Daniel N. Smith
Counsel for Opposer

1 Salem Green, Suite 405

Salem, MA 01970

Telephone: 978-882-0160 Facsimile: 978-882-0161



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Christopher Lohring))
Opposer/Applicant v. THREE NOTCH'D BREWING COMPANY, LLC Applicant/Opposer	NOTICE OF OPPOSITION In Re Serial. No. 85/920,112 Mark: Three Notch'd BREWING COMPANY Charlottesville, Va International Class: 032 Filed: May 1, 2013 Opposition No.: 91217290

OPPOSER'S SUPPLEMENTAL RESPONSES TO APPLICANT'S FIRST SET OF DOCUMENT REQUESTS

Opposer submits the following supplemental responses to Applicant's First Set of Requests for Production of Documents.

Preliminary Statement and General Objections

- 1. Opposer provides the responses herein without admitting the relevancy, materiality, or admissibility of the information, and specifically reserves the right to object at trial to the relevancy, materiality, or admissibility of any information provided herein.
- 2. Opposer reserves the right to supplement these responses as may become necessary prior to the trial of this action.
- 3. Opposer objects to Applicant's document requests to the extent they call for information protected from discovery under the attorney-client privilege and/or work product immunity, or is otherwise not subject to discovery.
 - 4. Opposer objects to Applicant's document requests as seeking confidential

information absent the execution of a mutually agreeable protective order. To the extent that these responses indicate that documents will be produced, such documents will be produced on an "Attorney's Eyes Only" basis.

- 5. Opposer objects to Applicant's document requests and definitions to the extent that they require Opposer to undertake burdens beyond the requirements imposed by the Federal Rules of Civil Procedure and Rule 2.120 of the trademark Rules of Practice of the United States Patent and Trademark Office.
- 6. Opposer further objects to these document requests to the extent that they seek information irrelevant to the subject matter of this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.
- 7. Opposer objects to these document requests to the extent that they are duplicative and redundant.
- 8. Opposer objects to these document requests to the extent that they seek documents not within the Opposer's possession, custody, or control.
- 9. In Opposer's responses herein, Opposer has indicated that relevant documents within their files will be produced. That statement is not to be construed as a representation that such documents exist but merely that they will be searched for and produced if found to exist.
- 10. Where Opposer has agreed to produce documents for inspection, it is understood that they will be produced at the offices of Opposer's counsel as kept in the usual course of business. However, where document requests are redundant or where a document falls into more than one document request, Opposer reserves the right to produce the document only once, pursuant to any one of the requests under which its production is sought.

These general objections apply to all of Opposer's responses set forth herein. To the extent that specific objections are made in a specific response, they are provided because they are believed to be particularly applicable to the specific interrogatory and should not be construed as a waiver of any general objection.

Request No. 2:

All documents Opposer has obtained from any third party concerning any matter relating to this action.

REDACTED

Request No. 5:

All documents evidencing, relating or referring to any instance in which a person has been confused, mistaken or deceived as to the source of Opposer's products advertised, promoted, offered for sale or sold under Opposer's Mark, including but not limited to instances of confusion, mistake or deception vis a vis Applicant's Mark.

REDACTED

Request No. 7:

All documents which evidence, reflect, or refer to any third party uses known to Opposer of the mark NOTCH, or any other trademark or design which includes the term "NOTCH", alone or in combination with any other words, designs, symbols, letters, numbers or phrases.

Request No. 10:

All documents evidencing Opposer's annual dollar volume of sales in the United States of

goods and services on which or in connection with the Opposer's Mark or Variations of

Opposer's Mark have been used for every year from the date of first use to the present. Include

all documents which reflect, refer to, relate to or evidence the information given in response to

Applicant's Interrogatory No. 11.

Response: See attached Exhibit 30.

Request No. 11:

Representative samples of all labels, packaging materials, advertisements, catalogs,

products, brochures, business materials, and other promotional materials bearing the Opposer's

Mark as currently used by Opposer in the United States.

REDACTED

Request No. 12:

Representative samples of all labels, packaging materials, advertisements, catalogs,

products, brochures, business materials, and other promotional materials bearing the Opposer's

Mark as used by Opposer in the United States which demonstrate use at the time or times stated

in Opposer's response to Interrogatory No. 12.

4

Request No. 13:

All documents evidencing, reflecting or referencing the geographic scope of Opposer's manufacturing, sales and promotion using Opposer's Mark.

REDACTED

DATED this 23rd day of December, 2014.

Respectfully submitted,

Daniel N. Smith, Esq. Counsel for Opposer

One Salem Green, Suite 405

Salem, MA 01970

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CERTIFICATE OF SERVICE

Under 37 C.F.R. § 2.119, the undersigned hereby certifies that a true and correct copy of the foregoing **OPPOSER'S SUPPLEMENTAL RESPONSES TO APPLICANT'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS** was served on Applicant's attorney of record at the correspondence address of record in the United States Patent and Trademark Office by sending a true copy thereof, via e-mail and First Class Mail; postage prepaid this 23rd day of December, 2014, in an envelope addressed as follows:

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